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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

ChemDry,
a Utah corporation,

Permittee

NPDES Facility No. NMU000729

§ Docket No. CWA-06-2008-1752
§
§
§ Proceeding to Assess a
§ Civil Penalty Under § 309(g)
§ of the Clean Water Act
§
§ ADMINISTRATIVE COMPLAINT
§

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (herein "Complainant"). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, "the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," including Rules related to Administrative Proceedings not Governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50 - 22.52.

Based on the following Findings, Complainant finds that the Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. ChemDry (herein "Respondent") is a corporation which was incorporated under the laws of the State of Utah, and as such, the Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant, the Respondent owned or operated a carpet cleaning franchise located at 9440 San Mateo NE, Suite J, Albuquerque, New Mexico 87113 (herein "the facility"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a "point source" of a "discharge" of "pollutants" with its industrial wastewater to the receiving waters of the Santa Fe River, Water Quality Segment NM20.6.4.98 NMAC, which is "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

5. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

6. A citizen complaint was received by the New Mexico Environment Department on May 3, 2007, that a van with a ChemDry logo was discharging wastewater into a City of

Santa Fe, NM, storm water drain located at 315 Old Santa Fe Trail. The drain was located in front of the Bistro 315 restaurant. There was a sign glued down in front of the drain, written in both English and Spanish, that stated: *No Dumping – Flows to Arroyo – Only Rain In The Drain.*

7. Santa Fe, NM, is a Phase II Municipal Separate Storm Sewer System (MS4) as defined by CWA § 402(p) and further defined at 40 CFR 122.26(b)(16) and 40 CFR 122.32(a) (1) and (2).

8. New Mexico Environment Department inspectors conducted an inspection of the site on May 3, 2007.

9. Contact was made with Mr. Patrick Wallace of ChemDry who acknowledged two employees had discharged carpet cleaning wastewater containing the cleaning solution *Natural IV for CTS Systems* after cleaning the carpets at Bistro 315. He stated the employees believed they were discharging to a sanitary sewer, which is a standard practice for ChemDry.

10. Each discharge as described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

11. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$32,500.

12. EPA has notified the New Mexico Environment Department of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the

assessment of an administrative penalty against the Permittee as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

13. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. Proposed Penalty

14. Based on the foregoing Findings, and pursuant to the authority of Section 309(g)(1) and Section(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(1) and § (g)(2)(A), EPA Region 6 hereby proposes to assess against the Permittee a penalty of \$11,000.

15. The proposed penalty amount has been determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

16. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, subpart I, shall apply to this case, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act. However, pursuant to 40 C.F.R. § 22.42(b), Respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. § 554, and Respondent waives this right unless Respondent in its answer requests a hearing in accordance with 5 U.S.C. § 554.

IV. Failure to File an Answer

17. If the Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, the permittee must file an answer to this complaint within thirty (30) days after service of this complaint whether or not the Respondent requests a hearing as discussed below.

18. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy attached). Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

19. If the Respondent does not file an answer to this complaint within thirty (30) days after service of this complaint, a default order may be issued against the permittee pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by the Respondent without further proceedings sixty (60) days after a final default order is issued.

20. The Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Ms. Lynde Jones (6RC-EW)
U.S. EPA
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

21. The Answer must be signed by the Respondent, the Respondent's counsel, or other representative on behalf of the Respondent and must contain all information required by 40 C.F.R. §22.05 and § 22.15, including the name, address, and telephone number of the Respondent and the Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

22. The Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, including 40 C.F.R. § 22.50 through § 22.52.

23. Any request for hearing should be included in the Respondent's Answer to this Complaint; however, as discussed above, the Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

24. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to

present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C.

§ 1319(g)(4)(B).

VI. Settlement

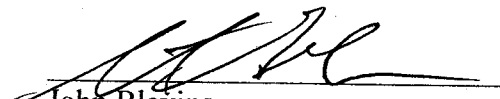
25. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, the Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. The Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Ms. Diana McDonald, at (214) 665-7495.

26. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b). The issuance of a Consent Agreement and Final Order would waive the Respondent's right to a hearing on any matter stipulated therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such Consent Agreement and Final Order and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the Consent Agreement and Final Order.

27. Neither assessment nor payment of a penalty in resolution of this action will affect the Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

DEC 06 2007

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-HO)
U.S. EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

Copy by certified mail,
return receipt requested: Mr. Patrick Wallace
ChemDry
9440 San Mateo NE, Suite J
Albuquerque, NM 87113

Carbon copy hand-delivered: Ms. Lynde Jones (6RC-EW)
U.S. EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

Dated:

DEC 06 2007

Jackie Samuel